



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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DIRECTOR

October 4, 1991  
AO-91-21

David E. Wood, Esq.  
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MASSPIRG  
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Re: Ballot Question Political Committees  
Durational Limitations/Change of Purposes

Dear Mr. Wood:

This letter is in response to your July 11, 1991, letter requesting an advisory opinion.

You have stated that the Recycle Initiative Campaign (the "Campaign"), a so-called ballot question political committee, was organized in September 1989 to support a ballot initiative which promoted recycling and environmentally sound product packaging. Initiative Petition 89-39 (the "initiative petition") was the first and, to date, only such measure promoted by the Campaign. This initiative petition was removed from the ballot by the Secretary of State by order of the Supreme Judicial Court. See Capezzuto v. State Ballot Law Commission, 407 Mass. 949, 556 N.E. 2d 366 (1990).

Subsequent attempts to reinstate the question on the ballot were unsuccessful and the operations of the Campaign were suspended. As of the date of your advisory opinion request, the Campaign is still in existence and has regularly filed its periodic reports as required by M.G.L. c.55. The Campaign's liabilities are currently in excess of its assets and consist primarily of unpaid loans from MASSPIRG to the Campaign.

The Campaign's activities are currently "on hold" pending resolution of the questions you have asked the Office. Specifically, you ask two questions which I will re-state and answer separately.

1. What are the durational limitations, if any, applicable to ballot question committees established and operated under the provisions of M.G.L. c.55?

The campaign finance laws define a "political committee" in pertinent part, as

[A]ny committee . . . which receives contributions or makes expenditures for the purpose of . . . opposing or promoting . . . a charter change, referendum question, constitutional amendment, or other question submitted to the voters. M.G.L. c.55, s.1

Section 7 of M.G.L. c.55 provides, in pertinent part, that:

A political committee . . . may receive . . . or expend [money or its equivalent] for the purpose of . . . favoring or opposing the adoption or rejection of a question submitted to the voters, and for other purposes expressly authorized by this chapter subject, however, to the provisions thereof.  
(Emphasis added)

Section 6 of M.G.L. c.55 regulates expenditures of all political committees and provides that monies and other things of value may be expended "for the enhancement of . . . the principle, for which the committee was organized. . . ."1  
(Emphasis added)

Finally, section 18 of M.G.L. c.55 as most recently amended by Chapter 175 of the Acts of 1991 provides that no political committees may convert residual funds "to the personal use of . . . any . . . person" but must donate such funds to the categorical grants fund, a scholarship fund, certain charitable organizations or the general fund of a city or town. In addition, section 18 as amended provides that the Director may petition the Supreme Judicial Court for the dissolution of a political committee, if:

(iii) such political committee was organized for the purpose of favoring or opposing the adoption or rejection of a question submitted to the voters and there has been a final determination made as to the adoption or rejection of such question. (Emphasis added)

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1. All expenditures are subject to (1) a complete prohibition against personal use, (2) any rules and regulations established by the Office, and (3) any limitations on contributions to other political committees. These limitations are not relevant for purposes of this advisory opinion.

Pursuant to the above statutory provisions, political committees may organize to promote or oppose a ballot question.<sup>2</sup> Once organized, such a political committee may receive contributions and expend money to achieve its goal, i.e., the adoption or rejection of the ballot question. However, once a final determination regarding adoption or rejection has been made, the political committee must dissolve in accordance with M.G.L. c.55. If it does not so dissolve, the Office may petition the Supreme Court to dissolve the political committee. Two earlier advisory opinions of this Office, AO-83-06 and AO-84-05, confirm this conclusion. In each opinion, the Office stated that a ballot question committee must dissolve at such time that the question involved was no longer at issue.

The above conclusion is consistent with a major purpose of campaign finance legislation: the avoidance of corruption or the appearance of corruption. A ballot question committee has raised money from the public for specific purposes. If a ballot question committee were permitted to continue in existence after a final determination of that question was made, the possibility (or at least the appearance of such a possibility) exists that monies raised for one purpose would be used for another purpose. Indeed, it would be possible to raise funds to pay off liabilities relating to one campaign regarding a particular ballot question by seeking funds to promote another ballot question.<sup>3</sup>

Although there is reference to ballot questions (in the plural) which promote "recycling and environmentally acceptable product packaging" in the Campaign's statement of organization and not a specific ballot initiative, the campaign was devoted to raising funds to achieve passage of Initiative Petition 89-39. Consequentially, the individuals supporting the Recycling Initiative Campaign would have expected that their contributions would be directed toward that end and would reasonably expect that no other use would be made of those funds. Indeed, if the Campaign were not raising money with respect to a specific ballot question, even more serious problems of potential abuse are raised. Quite simply, it is

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2. It is the Office's opinion that even though the reference to a ballot question is in the singular, a political committee is not prohibited from organizing to support or oppose more than one ballot question. However, as discussed infra, political committees must organize to support specific, identifiable ballot questions.

3. While there may be internal administrative steps that political committees can take to reduce the possibility of corruption, such steps would be difficult to monitor and insufficient to protect the public. Also, the additional administrative burden to manage temporarily two committees is probably no greater than such internal administrative steps.

the Office's opinion that "ongoing" ballot question political committees were not contemplated by the statute.<sup>4</sup>

Notwithstanding the above discussion, it is the opinion of this Office that the Campaign does not have to dissolve at this time provided it intends to seek passage of an identical or substantially identical ballot question during the 91-92 election cycle. This is because a "final determination" was not made regarding the rejection or adoption of Initiative Petition 89-39.<sup>5</sup> Rather, the ballot was removed by the Supreme Judicial Court for reasons relating to signatures which did not constitute a "final determination" regarding the rejection or adoption of the particular petition. However, if the Campaign does not intend to pursue a substantially identical ballot question during the 91-92 election cycle, then it would be required to dissolve at this time in accordance with M.G.L. c.55.<sup>6</sup>

2. What are the limits, if any, on amending the purposes of a ballot question committee?

M.G.L. c.55, s.5 requires that all political committees seeking to influence such questions organize by filing a statement of organization with the Office. This statement must include, inter alia, "a statement of the purpose for which the political committee is organized". M.G.L. c.55, s.5 provides that:

Any change in information previously submitted in a statement of organization shall be reported to the director . . . within ten days following the change.

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4. A ballot question committee must dissolve even if the ballot question is defeated and the committee hopes to bring an identical question before the voters in a subsequent election cycle. The support of a particular question during one election cycle does not imply support during a subsequent cycle since economic, political and other conditions change.

5. There are instances when a "final determination" may occur without consideration by the voters. For example, if the Attorney General determines (and such determination is upheld by the courts) that a ballot question should not be certified because it fails to conform to the requirements of Article 48 of the Massachusetts Constitution, a final determination for purposes of M.G.L. c.55 would have been made if the failure concerns a substantive aspect of the ballot question.

6. It is the Office's understanding that another recycling initiative petition (91-20) has been certified by the Attorney General. The Office was not asked to review this petition to determine if it is identical or substantially identical to 89-39. Such a review would be undertaken if requested or required to assure compliance with this opinion.

The requirement that ballot question committees state their purpose or purposes is designed to insure that the public will know how its contributions will be used by a particular committee. This requirement is buttressed by the statutory prohibition against personal use. Based upon the principles enunciated above along with the provisions of M.G.L. c.55, s.18 as amended by Chapter 175 of the Acts of 1991, it is the opinion of this Office that a ballot question committee may not change or amend its statement of purpose except to clarify its purposes with respect to a ballot question consistent with its original purpose.

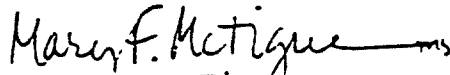
For example, it would have been appropriate for the Recycling Initiative Campaign to amend its purpose to state "to support Initiative Petition 89-39 which promotes recycling and environmentally acceptable product packaging" or to change its purpose to refer to an identical or substantially identical petition that the Campaign now wishes to promote. However, the Campaign may not change its purposes to include different of broader waste and environmental pollution problems. It cannot be assumed that people who support a particular ballot question will be supportive of a broader ballot question on the same subject matter.

In conclusion, unless the Campaign plans to support the Initiative Petition 91-20 and this initiative petition is identical or substantially identical to Initiative Petition 89-39, it is the opinion of this Office that the Campaign must dissolve in accordance with M.G.L. c.55. If MassPIRG wishes to pursue other ballot question initiatives, it must organize a separate committee.

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office should you have additional questions.

Very truly yours,

  
Mary F. McTigue  
Director